

# PLANNING COMMISSION MINUTES

August 8, 2001

## CALL TO ORDER:

Chairman Vlad Voytilla called the meeting to order at 7:00 p.m. in Meeting Room "A" of the Beaverton Public Library at 12375 SW Fifth Street.

## ROLL CALL:

Present were Chairman Vlad Voytilla, Planning Commissioners Bob Barnard, Gary Bliss, Russell Davis, Eric Johansen and Dan Maks. Planning Commissioner Brian Lynott was excused.

Development Services Manager Steven Sparks, AICP, Planning Consultant Irish Bunnell, Assistant City Attorney Ted Naemura and Recording Secretary Sandra Pearson represented staff.

The meeting was called to order by Chairman Voytilla, who presented the format for the meeting.

## VISITORS:

Chairman Voytilla asked if there were any visitors in the audience wishing to address the Commission on any non-agenda issue or item. There were none.

## OLD BUSINESS:

Chairman Voytilla opened the Public Hearing and read the format for Public Hearings. There were no disqualifications of the Planning Commission members. No one in the audience challenged the right of any Commissioner to hear any of the agenda items, to participate in the hearing or requested that the hearing be postponed to a later date. He asked if there were any ex parte contact, conflict of interest or disqualifications in any of the hearings on the agenda. There was no response.

## CONTINUANCES:

### A. OREGON EPISCOPAL SCHOOL MARSH ENHANCEMENT

(Continued from June 20, 2001)

The following land use applications have been submitted for an enhancement project for the Oregon Episcopal School marsh for a proposed project that will increase flood storage volume and wetland function while enhancing fish and

wildlife habitat. The development proposal is located east of SW Nicol Road, south of Willowmere Drive and north of Vermont Street, and is identified on Washington County Assessor's Map 1S1-13, Tax Lots 300 and 400, and Map 1S1-13DC, Tax Lot 4000. The site is zoned Urban Standard Density (R-7) and is approximately a total of 29.00 acres in size.

**A. CUP 2001-0011 – CONDITIONAL USE PERMIT**

This request involves the approval of a Conditional Use Permit (CUP) for the proposed water conservation/flood control project in the Urban Standard Density (R-7) zoning district, with a decision to be based upon the approval criteria listed in Section 40.05.15.2.C.

**B. TPP 2001-0002 – TREE PRESERVATION PLAN**

This request involves the approval of a Tree Preservation Plan (TPP) for the proposed grading activity within the boundaries of a Significant Tree Grove, with a decision to be based upon the approval criteria listed in Section 40.75.

Commissioner Maks **MOVED** and Commissioner Barnard **SECONDED** a motion to continue CUP 2001-0011 – Oregon Episcopal School Marsh Enhancement Conditional Use Permit to a date certain of October 3, 2001.

Motion **CARRIED**, unanimously.

Commissioner Maks **MOVED** and Commissioner Barnard **SECONDED** a motion to continue TPP 2001-0002 – Oregon Episcopal School Marsh Enhancement Conditional Use Permit to a date certain of October 3, 2001.

Motion **CARRIED**, unanimously.

Development Services Manager Steven Sparks suggested revising the order of business and approving the minutes prior to the work session.

Observing that the recorder is momentarily out of the room, Chairman Voytilla advised Mr. Sparks that he would prefer to wait and make any revisions and approve the minutes in her presence.

**NEW BUSINESS:**

**WORK SESSION:**

**A. DEVELOPMENT CODE UPDATE**

Noting that he is the new Development Services Manager for the Community Development Department, Mr. Sparks introduced the former Development Services Manager, Irish Bunnell, who is serving as a consultant for the update to

1 the Development Code. He described this project, which has been in process  
2 since 1997, observing that staff would like to discuss certain chapters that have  
3 been proposed at this time, adding that any additional issues and items would be  
4 addressed at the next scheduled work session on August 15, 2001. He mentioned  
5 that he would like to address Chapter 50, which involves the procedures section of  
6 the Development Code, at this time, adding that Chapter 40, which is the  
7 applications section of the Development Code, would be discussed next week.  
8

9 Mr. Sparks pointed out that amendments have been proposed to four other  
10 chapters of the Development Code, noting that while these amendments are  
11 relatively minor in nature and could be addressed tonight, as time is available,  
12 most of the revisions involve Chapters 40 and 50.  
13

14 Noting that the recorder is distributing copies of a time line that had not been  
15 included within the regular packets, Mr. Sparks observed that this time line  
16 illustrates all of the application types that are currently processed through the  
17 existing Development Code, as well as the application types proposed to be  
18 processed through the proposed Development Code. He mentioned that Mr.  
19 Bunnell would further clarify this graphic timeline, which he had prepared,  
20 emphasizing that the key issue is that this indicates how meeting the 120-day  
21 mandate in the current Development Code is problematic. He noted that there are  
22 instances in which the 120-day timeline could not be met, leading to complaints  
23 from citizens groups who have indicated that the notices that have been prepared  
24 to address the 120-day concerns are difficult to understand.  
25

26 Mr. Sparks indicated that he would like to provide a broad overview of the  
27 rationale behind the amendments to Chapter 50, reiterating that this is the  
28 procedures section of the existing Development Code. He pointed out that  
29 Chapter 50 of the existing Development Code is approximately thirty pages,  
30 which is relatively brief, noting that this document is either silent on a great  
31 number of procedures, or the applicable procedures are located elsewhere in this  
32 document, with the result that anyone who is not intimately familiar with the  
33 document would not know where to find necessary information. Noting that the  
34 most common location for procedures is Chapter 40, he mentioned that Chapter  
35 40 frequently outlines the appeal section and refers to Chapter 50, which is  
36 confusing and does not, in some instances, provide all applicable information. He  
37 stated that all procedures and silent procedures have been located together, adding  
38 that staff has devised a "step" process, which should allow for a logical  
39 understanding of the process. Referring to the late Planning Commissioner Chuck  
40 Heckman's statement that an 8<sup>th</sup> grader should be able to understand these  
41 documents, he expressed his opinion that the document could be understood by an  
42 8<sup>th</sup> grader who is able to pay attention, concentrate and focus. He emphasized that  
43 staff had done a very good job of preparing this document, adding that there is  
44 always the potential for improvements. Concluding, he mentioned that the draft  
45 goes a very long way towards addressing a great many of the concerns expressed  
46 to staff, and offered to summarize or respond to questions and comments.

1  
2 Chairman Voytilla requested clarification of how the Commission wishes to deal  
3 with this issue and opened up the discussion for comments and questions.  
4

5 Commissioner Maks referred to Section PR-1, 50.05.3, specifically whether it is  
6 quasi-judicial if a property owner owns three properties and wishes to change the  
7 zone.  
8

9 Mr. Sparks advised Commissioner Maks that for the purposes of such an  
10 application, with only one owner, it is safe to assume that this would be a quasi-  
11 judicial application.  
12

13 Commissioner Maks questioned the status of such an application with more than  
14 one owner, with a group application, emphasizing that his concern is that the  
15 Development Code stipulates that only the City Council, Mayor or Director has  
16 the authority to file a Zone Change application subject to a Type 4 procedure.  
17

18 Mr. Sparks suggested that this issue should be considered and discussed with the  
19 City Attorney.  
20

21 Commissioner Maks referred to Section PR-3, 50.15.1.4. specifically whether the  
22 Board of Design Review is involved in the Text Amendment process, adding that  
23 his understanding is that the Planning Commission has the final authority on Text  
24 Amendments.  
25

26 Mr. Sparks informed Commissioner Maks that the Planning Director has the final  
27 authority, under the current Development Code, to submit certain Text  
28 Amendments (such as Sign Code Amendments) to the Board of Design Review.  
29

30 Commissioner Maks referred to Section PR-8, 50.25.6, regarding the Planning  
31 Director's authority to waive what he considers unnecessary application  
32 requirements, specifically whether a required Traffic Study could be waived.  
33

34 Mr. Sparks advised Commissioner Maks that, if, in the judgment of the Planning  
35 Director, the required Transportation Study for a Conditional Use Permit (CUP)  
36 application is not necessary because the proposal is not traffic-related, this  
37 requirement could be waived. He described a Design Review application for the  
38 Library Park, pointing out that although one of the requirements provided for the  
39 submittal of building elevations, because no buildings were involved, this  
40 requirement had been waived.  
41

42 Commissioner Maks pointed that this had been a problem previously, with regard  
43 to transportation issues, emphasizing that while the Planning Commission may be  
44 the reviewing authority on the application, there is a possibility that they could  
45 disagree with the Planning Director's opinion that there is not a traffic or noise  
46 issue. He pointed out that if the Planning Director indicates that this information

1 is unnecessary for completion, he is withdrawing the Planning Commission's  
2 right as the approval authority.

3  
4 Observing that there are two types of philosophical positions that could be taken  
5 on such an issue, Mr. Bunnell noted that one is to include the application  
6 requirements in checklist form at the Development Counter, rather than within the  
7 Development Code, and that the other option would be to include these  
8 requirements within the Development Code, which would require an actual Text  
9 Amendment to eliminate a requirement. He expressed his opinion that there must  
10 be some discretion, short of a Text Amendment, for application requirements,  
11 adding that this discretion is exercised at the Development Counter on a daily  
12 basis.

13  
14 Expressing his agreement with Mr. Bunnell, Commissioner Maks emphasized that  
15 his concern is with other issues and the possibility of separating them out.

16  
17 Mr. Bunnell indicated that this separation is not feasible, pointing out that the  
18 checklist is generic for all Type 3 requirements, emphasizing that staff is  
19 responsible for exercising some discretion daily.

20  
21 Observing that he is still uneasy with this situation, although he understands,  
22 Commissioner Maks referred to Section PR-8, 50.25.9, regarding the extension of  
23 the 120 calendar day time line, noting that he had been led to understand that the  
24 City Attorney had indicated that this can not be done.

25  
26 Mr. Sparks advised Commissioner Maks that there is a divergence of opinion  
27 regarding this issue, pointing out that he would like the City Attorney to address  
28 this issue. He noted that when the text is actually proposed in the form of a  
29 formal proposal, what the Commission is currently reviewing might be modified.

30  
31 Commissioner Maks mentioned that while this had been agreed to in Code  
32 Review by all interested parties, they had been informed that this could not be  
33 included, adding that this would serve to avoid a "Home Depot-fashion"  
34 continuance.

35  
36 On question, Mr. Sparks clarified for Commissioner Johansen that the sixty days  
37 would be beyond the original 120-day limit.

38  
39 Commissioner Maks emphasized that an applicant would not have the opportunity  
40 to continue indefinitely, while they attempt to get their act together. He pointed  
41 out that this would eliminate the likelihood of an applicant submitting an  
42 application simply because code and text changes are underway, prior to spending  
43 the next several years perfecting their application.

44

1 Commissioner Moks referred to Section PR-19, 50.45.1, specifically whether this  
2 should refer to non-discretionary annexation, rather than discretionary annexation  
3 for Zone Change applications.  
4

5 Mr. Sparks informed Commissioner Moks that he is correct, that this involves  
6 non-discretionary annexation, rather than discretionary annexation, for Zone  
7 Change applications.  
8

9 Commissioner Moks questioned why Street Vacations are being submitted  
10 directly to the City Council.  
11

12 Observing that Street Vacations are governed by some very specific requirements  
13 through State Statute, Mr. Sparks informed Commissioner Moks that the local  
14 government body constitutes the decision-making authority, which is not  
15 necessarily delegated to the Planning Commission. He further clarified that based  
16 upon the legislative nature and contentiousness of Street Vacations, staff had  
17 recommended that they be directly submitted to and addressed by the City  
18 Council, rather than the Planning Commission, which he described as an  
19 opportunity to simplify this procedure.  
20

21 Expressing his opinion that Street Vacations should continue to be addressed as  
22 they are at this time, Commissioner Moks emphasized that Street Vacations have  
23 a tremendous amount to do with the planning process and the character of the  
24 community.  
25

26 Commissioner Moks referred to Sections PR-24 and PR-26, observing that he  
27 intends to allow Commissioner Johansen to address this issue.  
28

29 Commissioner Moks referred to Section PR-34, 50.57.1, regarding time limits to  
30 be observed for testimony during a public hearing, specifically whether the way  
31 this is written allows the Chairman to stipulate reduced limitations for public  
32 testimony and rebuttal statements. He emphasized that depending upon the issues  
33 and time constraints, the Chairman often needs this leeway.  
34

35 Chairman Voytilla agreed with Commissioner Moks' statement regarding the  
36 occasional necessity of reducing testimony limits, observing that allowing the  
37 stipulated time would very often result in extremely lengthy public hearings,  
38 beyond the specified 11:00 p.m. time.  
39

40 Expressing concern with making certain that "the playing field is level",  
41 Commissioner Johansen suggested that a three minute limitation on public  
42 testimony might necessitate a statement regarding proportional time reductions  
43 for all parties testifying. He emphasized that he would not feel justified in  
44 reducing the public's testimony without also reducing the testimony of the  
45 applicant.  
46

1 Observing that he understands Commissioner Johansen's concerns, Chairman  
2 Voytilla pointed out that a complete presentation would require a certain amount  
3 of time, adding that there are often multiple consultants and that the burden of  
4 proof falls upon the applicant, who has actually submitted money for the  
5 opportunity to present their evidence.

6  
7 Commissioner Johansen expressed his opinion that any issue that controversial  
8 should provide the opportunity for the public to address their concerns.

9  
10 Chairman Voytilla pointed out that public testimony must be specific in  
11 addressing applicable criterion that is included within the applicable Staff Report.

12  
13 Commissioner Maks mentioned out that the main focus is to keep the applicant  
14 "on target", adding that there seems to be no perfect method for accomplishing  
15 this goal. He mentioned that the committee had reviewed the procedures of other  
16 jurisdictions, including the City of Lake Oswego, adding that this process serves  
17 to provide direction to the applicant and anyone involved in an application. He  
18 emphasized the necessity of allowing the Chairman the discretion of adjusting  
19 these time limitations, due to the complexity of certain issues. Observing that  
20 some developments involve multiple applications, he pointed out that while a  
21 member of the public might be able to address concerns within three minutes, it  
22 would be nearly impossible for an applicant to address all of the issues within  
23 twenty minutes. He emphasized that discretion regarding time limitations should  
24 be left up to the Chairman.

25  
26 Chairman Voytilla referred to several projects involving multiple applications that  
27 had been presented to the Planning Commission over the past several years,  
28 noting that these applicants would have had a difficult time presenting sufficient  
29 information within twenty minutes.

30  
31 Mr. Bunnell mentioned that while the development community has indicated that  
32 they are comfortable with a twenty-minute presentation for a project, although  
33 there would obviously be special cases in which more time is requested. He  
34 explained that the developers would put together and submit a twenty-minute  
35 presentation, followed by a period in which they fully expect to respond to  
36 questions and comments.

37  
38 Mr. Sparks pointed out that there has been considerable discussion whether some  
39 of this information belongs in the By-Laws, rather than within the Development  
40 Code, adding that this clarification allows any individual to expect a certain  
41 amount of time.

42  
43 Chairman Voytilla stressed the importance of providing these ground rules prior  
44 to any Public Hearing or presentation.

45

1 Mr. Sparks pointed out that while staff is able to assure any member of the public  
2 that they will be granted five minutes in which to testify, this may also change,  
3 based upon the number of people who wish to testify.

4  
5 Chairman Voytilla emphasized that the Planning Commission would like to  
6 provide for some flexibility.

7  
8 Observing that the suggested five-minute limitation on citizen testimony is very  
9 rare, Commissioner Maks expressed his opinion that this should be changed to  
10 three or four minutes.

11  
12 Commissioner Johansen expressed his opinion that based upon an assumption that  
13 the public could establish a good argument, there is no way a citizen could  
14 provide an effective or compelling argument on any issue within three minutes.

15  
16 Chairman Voytilla advised Commissioner Johansen that the Planning  
17 Commission has been generally limiting public testimony to three minutes.

18  
19 Commissioner Maks described the Planning Commission's time limit as a  
20 "lenient three", adding that the Washington County Commission allows two  
21 Minutes, the Beaverton School Board allows four minutes, and the Beaverton  
22 City Council allows four minutes. He pointed out that when he is aware that he  
23 has four minutes, he has prepared and practiced and is able to testify in four  
24 minutes. He mentioned that in Salem, a week's preparation and five hours of  
25 waiting does not guaranty the opportunity to testify.

26  
27 Mr. Bunnell observed that written testimony would also be accepted.

28  
29 Commissioner Johansen mentioned that although the applicant also has the  
30 opportunity to submit written testimony, they have a much greater amount of time  
31 during which to provide oral testimony.

32  
33 Chairman Voytilla emphasized that it is the burden of the applicant to validate  
34 and prove their request.

35  
36 Commissioner Maks pointed out that in a worst-case scenario, the applicant could  
37 be allowed to make a twenty-minute presentation, followed by up to three  
38 hundred citizens, at three minutes each. Emphasizing that the Planning  
39 Commission always wants to receive public input, he expressed his opinion that it  
40 is fairer to allow each of these citizens a certain amount of time, adding that this  
41 time could be increased, as necessary.

42  
43 Commissioner Barnard expressed his agreement with Commissioner Johansen,  
44 adding that there are few applications with a great amount of public testimony.

45



1 Chairman Voytilla mentioned that he would be inclined to protest if he found that  
2 the time he had been granted for public testimony had been reduced.

3  
4 Commissioner Maks emphasized that, given the time constraints, as a member of  
5 the public, he would practice his presentation or testimony for two weeks in order  
6 to be certain that he could address his issues within the time allowed.

7  
8 Mr. Sparks pointed out that staff has a lot of other issues to review with the  
9 Planning Commission during this work session, adding that no decisions could be  
10 made this evening regarding this process.

11  
12 Chairman Voytilla reminded the members of the public that this is a work session  
13 and that no public testimony would be accepted at this time, adding that a Public  
14 Hearing would be held at a later time, during which they would be permitted to  
15 testify.

16  
17 Commissioner Maks referred to Section PR-66, 50.95, regarding the Modification  
18 of a Decision. He mentioned that 50.95.5 indicates that an application for  
19 modification shall be subject to a Type 1, Type 2 or Type 3 procedure, as  
20 determined by the Director. He pointed out that a contentious Type 3 hearing  
21 could be held, with an application barely approved, and the applicant could return  
22 to the Planning Director at a later time for a modification without any review by  
23 the Planning Commission. He emphasized that any modification to a Type 3  
24 application should continue to be regarded as a Type 3 and require review by the  
25 Planning Commission.

26  
27 Observing that there are again two different philosophical positions on this issue,  
28 Mr. Bunnell mentioned that while Commissioner Maks just described one of these  
29 options, another option is to obtain an original Type 3 approval prior to making  
30 minor or moderate modifications at a later time through lesser processes.

31  
32 Commissioner Barnard requested clarification of what is considered a minor  
33 modification.

34  
35 Mr. Bunnell pointed out that the thresholds for applications are indicated in  
36 Chapter 40 of the Development Code.

37  
38 Mr. Sparks mentioned that Chapter 40 of the Development Code includes a  
39 section outlining modification of a CUP, which includes clarification of the  
40 thresholds.

41  
42 Commissioner Maks observed that while he does not intend to argue this point,  
43 this is the second time that it has been pointed out to him that there are two  
44 velocities.

45

1 Chairman Voytilla mentioned that he is aware from work in other jurisdictions  
2 that the Planning Director is allowed discretion to actually increase density, if the  
3 applicant has the ability to do so, without the benefit of the Public Hearing  
4 process.

5  
6 Mr. Bunnell suggested that Commissioner Maks is actually referring to what he  
7 described as the thresholds that trigger a Type 1, Type 2 or Type 3 modification  
8 application, adding that this information is all included within Chapter 40. He  
9 mentioned that in the year 2000, the City of Beaverton processed approximately  
10 800 Development Review Applications, adding that nearly 175 of these  
11 applications involved Type 3 Public Hearings and emphasized that the City would  
12 be unable to process 800 Type 3 Public Hearing Applications.

13  
14 Commissioner Barnard discussed another issue called an adjustment.

15  
16 Mr. Bunnell advised Commissioner Barnard that an adjustment is something like  
17 a variance, adding that this is actually a lesser variance.

18  
19 Commissioner Barnard mentioned that Chapter 40 mentions modifications to  
20 street design.

21  
22 Mr. Sparks informed Commissioner Barnard that while one section addresses  
23 CUPs, there are five potential applications within a CUP, one of which is a minor  
24 modification of a conditional use.

25  
26 Mr. Bunnell pointed out that every application has the potential for modification.

27  
28 Chairman Voytilla questioned the possibility of the Planning Commission  
29 receiving notification of an application for modification to any of the applications  
30 that they had reviewed and approved.

31  
32 Mr. Sparks indicated that some type of internal bookkeeping could make the  
33 Planning Commission aware of any such application for a modification of a  
34 previously approved Type 3 application.

35  
36 Expressing his opinion that Commissioner Maks' concerns are valid, Chairman  
37 Voytilla suggested that such an application for a modification should be  
38 forwarded to all parties of record for the original hearing.

39  
40 Commissioner Maks commented that the notification to individuals of record is a  
41 great idea, emphasizing that it is difficult to nail the appropriate thresholds down  
42 tight enough.

43  
44 Chairman Voytilla requested clarification of Commissioner Maks' concerns with  
45 regard to modifications that would not consider issues that were raised during the  
46 original application process, emphasizing that there are many issues to consider.

1 Commissioner Maks pointed out that he is only concerned with the thresholds that  
2 would affect those people who were here regarding the CUP application,  
3 observing that this should be tied to infrastructure, such as water, noise, traffic;  
4 impervious surfaces, compatibility and landscaping.

5  
6 Commissioner Voytilla mentioned a previous CUP that had involved a  
7 modification for a circulation change.

8  
9 Commissioner Maks advised Commissioner Voytilla that this application had  
10 been submitted back to the Planning Commission due to a change in a Condition  
11 of Approval. He noted that the entire application could be conditioned upon the  
12 approval of the Planning Commission, which would mean that any change would  
13 have to be reviewed by the Planning Commission. He cautioned that this is not  
14 the desired result, pointing out that while issues must be addressed, the applicant  
15 should be able to follow through with their project.

16  
17 Chairman Voytilla observed that staff knows how the Planning Commission feels  
18 about these issues, which should provide something for them to work with.

19  
20 Commissioner Maks referred to the appeals process for a Type 3 application.

21  
22 Mr. Sparks advised Commissioner Maks that this testimony is located on PR-56,  
23 50.80.2, and provides for the conduct of a City Council Appeal hearing,  
24 emphasizing that staff developed this language for this purpose.

25  
26 Observing that he has only one further comment, Commissioner Maks noted that  
27 it is necessary to consider a method for revising an incorrect Condition of  
28 Approval the following week.

29  
30 Mr. Sparks informed Commissioner Maks that this had been discussed at great  
31 length during Code Review, adding that staff had unfortunately concluded that  
32 that this could not be done.

33  
34 Emphasizing that the Planning Commission needs to understand why this can not  
35 be done, Commissioner Maks requested that Mr. Sparks review his notes for this  
36 information. He expressed concern that the By-Laws do not allow a motion for  
37 reconsideration and that this rule can't be suspended, pointing out that the result  
38 on three different occasions has been that conditions have been imposed that an  
39 applicant is unable to fulfill.

40  
41 Mr. Sparks discussed what is involved in revising Conditions of Approval,  
42 pointing out that adequate notification is required and the 120-day rule is still in  
43 effect. He further explained problems that could be created when making such a  
44 revision, pointing out that many of the involved parties are possibly comfortable  
45 with the original Conditions of Approval and that they would be unaware of  
46 changes without proper notification.

1 Commissioner Maks mentioned that there are two different philosophies, noting  
2 that when something is approved and not completed properly, through incorrect  
3 wording or other means, neither the public nor the applicant is adequately served.  
4

5 Commissioner Barnard questioned the possibility of providing the applicant the  
6 opportunity to rebut all of the Conditions of Approval.  
7

8 Mr. Bunnell advised Commissioner Barnard that rebuttal of the Conditions of  
9 Approval would be addressed through the appeal process, adding that an obvious  
10 error in a Condition of Approval would most likely be a very easy appeal.  
11

12 Chairman Voytilla emphasized that this situation needs to be corrected.  
13

14 Commissioner Maks pointed out that in a former situation, the applicant, *Gramor*  
15 *Development*, had not wished to appeal based upon only one Condition of  
16 Approval.  
17

18 Mr. Sparks commented that in the proposed text, the appeals are on the record,  
19 adding that a very specific item on the record could be appealed without  
20 reopening the entire issue.  
21

22 Chairman Voytilla questioned why the applicant should be motivated to appeal  
23 based upon an error by the City of Beaverton.  
24

25 Mr. Bunnell pointed out that while the Mayor is unable to file an appeal, he does  
26 have the authority to direct the Planning Director to file an appeal. He mentioned  
27 that there have only been two or three instances in which there had been a  
28 problem with a Condition of Approval during his seventeen years with the City of  
29 Beaverton.  
30

31 Mr. Naemura questioned whether staff would anticipate recommending the new  
32 procedure for modifications to an applicant.  
33

34 Mr. Bunnell responded that any Condition of Approval must come back to the  
35 original decision-maker.  
36

37 Chairman Voytilla expressed his appreciation to Commissioner Maks for his  
38 efforts on the Code Review Committee.  
39

40 Commissioner Maks assured Chairman Voytilla that he had enjoyed his  
41 experiences on the Code Review Committee and commended staff for their  
42 selection of individuals to serve on this committee.  
43

44 Commissioner Johansen described the proposed Development Code as easily read  
45 and understood. He referred to the Summary of Applications, page 3, specifically  
46 item number 6, and suggested the following correction:

1                   “6.     **Front Yard Parking.** This application has ~~not~~ been deleted from  
2                   the Code.”  
3

4                   Commissioner Johansen referred to the Summary of Applications, page 7,  
5                   specifically number 6, and requested an example of the “super application”.  
6

7                   Mr. Sparks advised Commissioner Johansen that the “super application” had been  
8                   authorized by the State legislature in 1999, adding that he believes that this  
9                   procedure had been generally initiated by the rural landowners who typically have  
10                  a very limited list of permitted uses that are allowed on their land. He further  
11                  clarified that in order to demonstrate a taking of land, the courts have mandated  
12                  that all administrative remedies have to be exhausted, and if there is a list of  
13                  twenty separate conditional uses possible on this land, it is necessary to apply for  
14                  all twenty in order to demonstrate that your ability to utilize your land has been  
15                  taken. He pointed out that if an application is submitted and a denial received, an  
16                  applicant then has the right to submit the super application to file for everything  
17                  within one application, which expedites the process. He emphasized that the  
18                  examples that he has seen all involve rural land, where limited development is  
19                  possible.  
20

21                  Commissioner Johansen requested clarification of whether this only involves  
22                  conditional uses.  
23

24                  Mr. Sparks advised Commissioner Johansen that this could also involve a  
25                  permitted use that is encumbered by some sort of regulation, such as a flood plain.  
26

27                  Mr. Bunnell described the circumstances under which an applicant could apply  
28                  for any use that is permitted or conditioned within a certain zone, noting that in  
29                  order to prove that there had been a taking the ability to utilize an individual’s  
30                  land, it would be necessary to deny every use.  
31

32                  Commissioner Johansen questioned whether staff would conceivably have to  
33                  require every possibility from the applicant in that process.  
34

35                  Mr. Bunnell agreed, expressing his opinion that such an application would be  
36                  horrendous.  
37

38                  Mr. Sparks pointed out that the application fee would also be horrendous, noting  
39                  that while the application could be processed as a single conditional use permit,  
40                  this could involve nineteen separate conditional use fees.  
41

42                  Commissioner Johansen referred to PR-15, 50.40, specifically whether B and C is  
43                  a change.  
44

45                  Mr. Sparks informed Commissioner Johansen that as proposed in this draft, the  
46                  noticing radius for application would vary, based upon the level of the

1 application. He mentioned that the City of Beaverton currently notices within 500  
2 feet for all Type 1, Type 2 and Type 3 applications, and Citywide for legislative  
3 issues. He noted that the proposal provides for no notification for Type 1, 300-  
4 foot notification for Type 2, 500-foot notification for Type 3, and continued  
5 citywide notification for legislative applications. Observing that a hierarchy of  
6 applications exists, he explained that this provides for a hierarchy of notification  
7 involvement. On question, he clarified for Commissioner Maks that staff is  
8 proposing no notification for a Type 1 application and that the Notice of Decision  
9 is forwarded only to the applicant.

10  
11 Mr. Bunnell described the Type 1 application as a non-discretionary application,  
12 pointing out that the Planning Director has no discretion in this decision on the  
13 application that has to meet certain criteria.

14  
15 Mr. Sparks commented that with the Type 1 applications, it is also necessary to  
16 determine whether they meet the threshold of being minor in nature.

17  
18 Commissioner Johansen referred to PR-19, 50.35.3.D., specifically whether the  
19 notification regarding a proposed zone change includes both permitted and  
20 conditional uses.

21  
22 Mr. Sparks advised Commissioner Johansen that staff would list those uses that  
23 would be authorized within the zoning district, including both permitted and  
24 conditional uses.

25  
26 Commissioner Johansen referred to PR-23 and PR-24, specifically the four  
27 options for action that the decision-making authority shall take at the conclusion  
28 of the hearing on each application. He expressed his opinion that item B, holding  
29 the public record open, does not accomplish anything, and requested clarification  
30 of what occurs when this option is taken.

31  
32 Mr. Sparks informed Commissioner Johansen that this option is mandated by  
33 State statute, observing that an individual could request that the record be held  
34 open for a period of at least seven days. He expressed his opinion that this section  
35 should be augmented to the degree that the Planning Commission is required to  
36 make a decision for a continuance, approval, approval with conditions, or a  
37 denial, at the end of the seven-day period of time.

38  
39 Commissioner Maks commented that the record could be left open even with the  
40 denial of an application.

41  
42 Mr. Sparks suggested that another subsection be included providing for a decision  
43 and that the record is left open for seven days, noting that additional clarity is  
44 necessary.

45

1 Commissioner Johansen suggested that option C provide for a decision with the  
2 record left open.

3  
4 Commissioner Maks emphasized that it is necessary to make the statement that  
5 the record is being left open.

6  
7 Mr. Sparks assured the Planning Commissioners that staff would keep this issue  
8 under consideration, noting that this would provide the opportunity for individuals  
9 who wish to submit additional information before an issue reaches the appeals  
10 process.

11  
12 Commissioner Johansen referred to Section PR-35, 50.58.2, observing that he  
13 approves of the requirement that written comments or exhibits be submitted to  
14 staff prior to the Public Hearing must be received by the Planning Director by  
15 4:30 p.m. on the day of the scheduled hearing. He questioned whether there is a  
16 consequence for not meeting this established deadline.

17  
18 Mr. Sparks informed Commissioner Johansen that there is a consequence for  
19 failing to meet this deadline, observing that the applicant would then have the  
20 opportunity to walk across the street to *Kinko's* to prepare the required amount of  
21 copies. He pointed out that staff has a major concern that an individual might  
22 submit a 500-page petition and cause a Public Hearing to be stopped while copies  
23 are prepared. He mentioned that the notice would advise anyone wishing to  
24 submit written testimony at the Public Hearing would have to submit ten copies.

25  
26 Commissioner Johansen observed that while this would ensure that an adequate  
27 number of copies would be submitted, it would not provide any assurance that  
28 materials would be submitted in a timely manner.

29  
30 Commissioner Maks emphasized that State law provides that an individual can  
31 drop any information or documents directly on the desk at any point in the  
32 process.

33  
34 Mr. Bunnell discussed the inconvenienced created when one copy is submitted at  
35 the last moment and a member of staff is required to leave the room for a period  
36 of time in order to make copies.

37  
38 Commissioner Johansen referred to Section PR-46, 50.70.4, specifically a  
39 determination of who has standing to provide testimony during an appeal. He  
40 mentioned that he would like to see a situation in which a Planning Commissioner  
41 felt compelled to explain his position on an issue that had been heard, noting that  
42 this section does not appear to allow or provide for this possibility.

43  
44 Mr. Bunnell clarified that the question involves whether the former decision-  
45 maker is considered a part of the public record.

46

1 Mr. Sparks informed Commissioner Johansen that he would research this issue  
2 and provide the Planning Commissioners with this information.

3  
4 Commissioner Johansen expressed concern that the testimony that is considered  
5 from the Planning Commission Minutes by the City Council would fully reflect  
6 the position of the Planning Commissioners.

7  
8 Mr. Sparks pointed out that if Commissioner Johansen chooses to elaborate on his  
9 point of view, staff has concerns with the ability to cut an individual off in order  
10 to review new evidence. He mentioned that this is one of the drawbacks to  
11 reviewing information on the record, in order to determine exactly what  
12 comprises new evidence.

13  
14 Expressing confidence in his ability to fulfill his new responsibilities,  
15 Commissioner Barnard congratulated Mr. Sparks on his new position as  
16 Development Services Manager. He questioned what procedure should be  
17 followed in making basic corrections to a document such as the Development  
18 Code.

19  
20 Mr. Sparks suggested that Planning Commissioners e-mail any basic edits, such  
21 as punctuation, to him, adding that unless the content is changed, it is not  
22 necessary to provide this information to everyone. He emphasized that staff  
23 always appreciates any comments, questions or clarifications from the Planning  
24 Commissioners, noting that they can be prepared to respond to any information  
25 that is received in advance.

26  
27 Commissioner Barnard referred to Section PR-14, 50.35.4, expressing his opinion  
28 that this provision appears to be holding up the process.

29  
30 Mr. Sparks advised Commissioner Barnard that this is actually to the benefit of  
31 the applicant, noting that typically the decision on a Type 1 application is not  
32 effective until ten days following the decision. He pointed out that if the  
33 applicant agrees with the decision and wishes to move ahead expediently, they  
34 have the opportunity to submit a document that waives their right to an appeal,  
35 and emphasized that this only involves Type 1 applications.

36  
37 Commissioner Barnard referred to Section PR-20, 50.45.3.K and L, expressing  
38 his opinion that the word "inspection" should be replaced with the word  
39 "viewing."

40  
41 Mr. Sparks observed that staff could make this revision.

42  
43 Commissioner Barnard referred to Section PR-22, 50.45.7.B, specifically whether  
44 the City of Beaverton customarily furnishes these signs.

45



1 Mr. Sparks clarified that this section should indicate that these signs would be  
2 provided, at cost, to the applicant, by the City of Beaverton. He pointed out that  
3 when in doubt, staff has utilized statutory language, noting that staff has been  
4 advised by the City Attorney, on a number of occasions, to be silent on or not to  
5 paraphrase a statutory requirement.

6  
7 Commissioner Barnard referred to Section PR-32, 50.55.1.F, which states that if  
8 any member of the decision-making authority has visited the site, they generally  
9 describe what was observed. Observing that the members of the Planning  
10 Commission generally only indicate whether they have visited the site and that no  
11 ex parte contact was made, and questioned whether corners have been cut on this  
12 particular portion of the process.

13  
14 Mr. Sparks advised Commissioner Barnard that while he feels that this practice  
15 has been adequate, there is a benefit in describing what had been observed at the  
16 site.

17  
18 Commissioner Barnard expressed his concern that the content of this section  
19 appears to require a description of any observations.

20  
21 Commissioner Maks informed Commissioner Barnard that this would technically  
22 be a requirement, on the condition that it can be shown that the site visit affected  
23 the decision-making process in any way.

24  
25 Mr. Naemura mentioned that this would, theoretically, become evidence on the  
26 public record.

27  
28 Commissioner Barnard questioned the potential of an appeal being based upon a  
29 failure to follow the proper procedures, specifically that a site visit was made but  
30 the Planning Commissioner had not described what they had observed.

31  
32 Mr. Sparks discussed the possibility of creating a hardship for an applicant by  
33 now following proper procedures, providing the basis for an appeal.

34  
35 Commissioner Barnard referred to Section PR-41 50.65.4, suggesting that the  
36 definition of the phrase *de novo* could be eliminated, pointing out that this is  
37 defined in Chapter 90.

38  
39 Commissioner Barnard referred to Section PR-56, 50.80.3, suggesting that line 4  
40 be amended, as follows: "Section 50.80.85.2.F..."

41  
42 Chairman Voytilla questioned whether payment of the applicable fee indicates  
43 that the application is deemed complete.

44  
45 Mr. Sparks explained that if an applicant pays the required fees and insists that a  
46 crayon drawing on a cocktail napkin is a complete application, staff would

1 proceed with the process. He referred to Section PR-7, 50.25.1.3, which provides  
2 that the Director may defer collection of application fees during application  
3 completeness reviewed, emphasizing that the application shall not be deemed  
4 complete until all required fees are received.

5  
6 Chairman Voytilla observed that an applicant who might not agree to provide all  
7 of the required documentation still has the right to be heard if the required fees are  
8 submitted.

9  
10 Mr. Bunnell concurred, noting that staff would process an application, upon  
11 request, without all of the required documentation, provided that the required fees  
12 have been accepted.

13  
14 Commissioner Barnard requested clarification of whether or not the Director has  
15 the authority to deem an application complete based on the thoroughness of the  
16 application. He mentioned that applications have been submitted in the past in  
17 which the applicants had not even addressed the applicable criteria and questioned  
18 how this could be prevented.

19  
20 Mr. Bunnell agreed that in spite of the numerous times they have been advised  
21 that they need to prepare a more substantial argument, some applicants will only  
22 address the minimum requirements, while others don't even address the minimum  
23 requirements and want their application to be considered complete and addressed.

24  
25 Commissioner Barnard mentioned that staff had recommended approval of a  
26 previous application that did not include all applicable materials, expressing his  
27 opinion that such an application should be denied based upon the absence of  
28 required documentation.

29  
30 Mr. Sparks agreed that this has occurred, adding that there have been instances in  
31 which staff has gone to extra lengths to do what was basically the responsibility of  
32 the applicant.

33  
34 Chairman Voytilla advised Mr. Sparks that this particular issue has been  
35 addressed with staff.

36  
37 Mr. Sparks explained that because the Development Code provides that pre-  
38 application conferences are required for Type 2, 3 and 4 applications, the  
39 applicant is informed in advance of the requirements that must be addressed to  
40 comply with the applicable criteria. He further clarified that in order for staff to  
41 determine whether a certain requirement is necessary, an evaluation must be done  
42 of the approval criteria. He emphasized that while staff is pretty conservative  
43 regarding application submittals and is aware of the expectations of both the  
44 Board of Design Review and Planning Commission, there are complaints from  
45 applicants that feel too much is expected. He pointed out that although he hopes

1       that the Planning Commission has an acceptable level of confidence in staff, it is  
2       inevitable that there could be issues on which they will disagree.

3

4       Chairman Voytilla referred to Section PR-12, 50.30.3.E, regarding the applicant  
5       taking notes, noting that in the past, applicants have been provided with actual  
6       transcripts.

7

8       Mr. Sparks requested clarification that Chairman Voytilla intends that applicants  
9       no longer be provided verbatim transcripts.

10

11       Chairman Voytilla mentioned that the minimum detail to be provided should be  
12       determined.

13

14       Mr. Sparks requested direction on what Chairman Voytilla feels is an acceptable  
15       level of detail for this purpose.

16

17       Commissioner Bliss commended the Code Review Committee for their efforts in  
18       preparation of this document.

19

20       Observing that he feels that he has received adequate feedback, Mr. Sparks  
21       referred to Chapter 50, noting that Mr. Bunnell had provided timelines and that it  
22       would be educational to review what has been scheduled and is part of the public  
23       record. He explained that this document graphically illustrates both the current  
24       and proposed processes, including some of the major flaws within the current  
25       Development Code.

26

27       Mr. Bunnell described this document, which addresses only the proposed process,  
28       adding that the existing process has not been included. He explained that several  
29       of the processes within the existing Development Code involve 180 days and  
30       prevent the City from meeting the 120-day deadline. He explained that several  
31       new positions in Development Services would allow staff to process applications  
32       in a more timely manner.

33

34       Mr. Sparks discussed the necessity of being able to provide an applicant with a  
35       timeline for the application process, observing that any variance in this timeline  
36       would be at the request of the applicant, who would complete and submit a waiver  
37       of the 120-day rule and request for continuance. He emphasized that the timelines  
38       are mandatory and must be followed. He mentioned the meeting schedule for the  
39       Board of Design Review and explained that with longer periods of time between  
40       meetings, this does create the potential for not meeting the 120-day deadline. He  
41       pointed out that staff is recommending that the Board of Design Review, like the  
42       Planning Commission, meet on a weekly basis. He explained that the ultimate  
43       result would be a document with the application submittal requirements that  
44       would be available as a handout and on the web page.

45

1 Mr. Sparks pointed out that other chapters of the proposed Development Code  
2 could either be discussed tonight or at another time, noting that while there are no  
3 significant policy changes, there are several changes Chapter 10 that should be  
4 addressed.

5  
6 Mr. Sparks referred to Section GP-9, 10.60.1, which states implicitly that the  
7 burden of proof is on the applicant to show that the proposal is in compliance with  
8 the applicable provisions, including but not limited to application approval  
9 criteria.

10  
11 Mr. Sparks referred to Section GP-13, regarding conditions, observing that a lot  
12 of this section is taken from Washington County, which matches up with the  
13 condition text that had been eliminated. He mentioned that there is a new section,  
14 borrowed from Lincoln City, which he attributed to the Dolan Case, pointing out  
15 that it had been determined that the demonstration of rough proportionality is not  
16 incumbent upon the local jurisdiction. The proposed text states that rough  
17 proportionality claims will have to be proven by the applicant.

18  
19 Mr. Sparks referred to Sections GP-17 through GP-24, observing that staff had  
20 added what he referred to as the Planning Participants, which clarifies the roles,  
21 appointments, memberships, as well as who has which responsibilities in the  
22 process. He noted that this has been taken from the Municipal Code and inserted  
23 into the Development Code.

24  
25 Mr. Bunnell described this as an example of allowing the Development Code to  
26 do the work and allowing the staff to address the applications that are before  
27 them, adding that he hopes that the public could find the answers to many of the  
28 questions currently addressed by staff within the Development Code.

29  
30 Commissioner Maks suggested that the Chairman and Vice-Chairman of the  
31 Planning Commission should be elected in December, observing that not  
32 everyone is available for this purpose at certain times.

33  
34 Commissioner Barnard referred to Section GP-15, observing that while the term  
35 Planning Director had been deleted in every other section, it was apparently  
36 missed in this particular location

37  
38 Mr. Sparks advised Commissioner Barnard that this has not been deleted because  
39 the name of the application is Planning Director's Interpretation, adding that for  
40 the purpose of consistency, the application would be revised to Director's  
41 Interpretation.

42  
43 Chairman Voytilla referred to Commissioner Maks' suggestion regarding the  
44 election of Chairman and Vice-Chairman in December, observing that this could  
45 create a problem since the terms start in January and the Planning Commission  
46 could have different members at that time.

1  
2 Noting that a new member is not going to serve as Chairman or Vice-Chairman,  
3 Commissioner Maks pointed out that the City Council usually makes their  
4 appointments in December, rather than January.

5  
6 Chairman Voytilla agreed that Commissioner Maks' suggestion is appropriate.  
7

8 Commissioner Maks mentioned that he would have to bribe an entire new set of  
9 Commissioners to vote for Commissioner Voytilla to continue to serve as  
10 Chairman.  
11

12 Mr. Sparks stated that Chapter 20 has been modified slightly, noting that this  
13 consists of basically consistency or editorial type of comments. He mentioned  
14 that the greatest amount of text is from page 40 through 98, which he described as  
15 a reorganization of the Multiple Use zoning section, which is long overdue. He  
16 stated that another substantial change involves the organization within the site  
17 development requirements for each zoning district.  
18

19 Mr. Bunnell commented that the existing Development Code is totally ambiguous  
20 concerning the availability of a variance or an adjustment for certain situations.  
21

22 Commissioner Maks questioned when comments would be accepted.  
23

24 Mr. Sparks informed Commissioner Maks that comments could be received  
25 during the Public Hearing or at this time. He pointed out that the wording for  
26 dwellings has been changed, noting that they would either be attached or  
27 detached, and would no longer be distinguished as single family, two-family,  
28 multi family or duplex. He mentioned that this also applies to Design Review.  
29

30 Commissioner Bliss referred to pages 10 and 11 of Chapter 20, specifically the  
31 minimum lot dimensions for R-5.  
32

33 Commissioner Sparks advised Commissioner Bliss that the existing standard for  
34 the minimum lot dimensions for R-5 is 0 feet.  
35

36 Mr. Bunnell commented that while the Code Review Committee had been  
37 responsible to revise Chapters 40 and 50, this was not possible without affecting  
38 the other chapters to some degree. He mentioned that the committee had  
39 attempted to have as little impact as possible upon those chapters, although some  
40 of these issues should be addressed at some point.  
41

42 Mr. Sparks announced that staff has prepared a schedule and hopes to schedule  
43 the initial Public Hearing for the Development Code Update on October 3, 2001.  
44

45 9:28 p.m. – Mr. Sparks and Mr. Bunnell left.  
46

1 **APPROVAL OF MINUTES:**

2  
3 Minutes of the meeting of June 20, 2001, submitted. Commissioner Johansen  
4 referred to page 4 of 22, suggesting that lines 9 through 14 be amended to provide  
5 that they are contained within a single paragraph for clarification purposes.  
6 Commissioner Maks referred to line 7, requesting that it be amended, as follows:  
7 "...expressed his regret at the great loss of Commissioner Heckman **and**  
8 **mentioned that many times Commissioner Heckman was more well read**  
9 **than he was with regard to applications.**" Commissioner Barnard **MOVED**  
10 and Commissioner Johansen **SECONDED** a motion that the minutes be  
11 approved, as amended.  
12

13 Motion **CARRIED**, unanimously.  
14

15 Minutes of the meeting of June 27, 2001, submitted. Commissioner Maks  
16 referred to line 39 of page 1, requesting that it be amended, as follows:  
17 "~~Chairman Voytilla~~ **Vice-Chairman Maks** opened the Public Hearing..."  
18 Commissioner Barnard **MOVED** and Commissioner Davis **SECONDED** a  
19 motion that the minutes be approved, as amended.  
20

21 Motion **CARRIED**, unanimously, with the exception of Chairman Voytilla, who  
22 abstained from voting on this issue.  
23

24 Minutes of the meeting of July 11, 2001, submitted. Commissioner Maks  
25 **MOVED** and Commissioner Johansen **SECONDED** a motion that the minutes be  
26 approved, as written.  
27

28 Motion **CARRIED**, unanimously, with the exception of Commissioner Barnard,  
29 who abstained from voting on this issue.  
30

31 **MISCELLANEOUS BUSINESS:**

32  
33 The meeting adjourned at 9:32 p.m.